

Remarks

Claims 1-22 have been canceled. Claim 23 has been amended to recite a method of making a method of making a milnacipran formulation comprising providing a milnacipran formulation that provides delayed or extended release of milnacipran to produce a therapeutic effect over approximately 24 hours when administered to a patient in need, with diminished incidence or reduced intensity relative to one or more immediate release milnacipran side effects. Support for the amendment is found at least in the claims, as originally filed, and the abstract.

Claim 24 has been amended to recite a method for delivering a therapeutic dose of milnacipran to a patient in need thereof, with diminished incidence or reduced intensity of common milnacipran side effects, comprising administering to the patient in need thereof a milnacipran formulation that provides delayed or extended release of milnacipran to produce a therapeutic effect over approximately 24 hours when administered to a patient in need, with diminished incidence or reduced intensity relative to one or more immediate release milnacipran side effects. Support for the amendment is found at least in the claims, as originally filed and the abstract.

New method claims 25-41 have been added, defining the composition used in the method. Support for the amendment is found at least in the claims as originally filed and now cancelled. The table below shows the relationship between new claims 25-41 and canceled claims 1-22.

AMENDMENT AND RESPONSE TO OFFICE ACTION

New Claim

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Canceled Claims

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Rejection Under 35 U.S.C. § 102

Claims 1-24 were rejected under 35 U.S.C. § 102(f) as being unpatentable over copending application U.S.S.N. 10/690,947. Applicants respectfully traverse this rejection.

Analysis

Applicants are submitting a Petition to Correct Inventorship in copending application U.S.S.N. 10/691,936, adding Srinivas G. Rao as an inventor. Dr. Rao is assigning his interest in U.S.S.N. 10/691,936 to Cypress Bioscience, Inc. As a result, the present application and U.S.S.N. 10/691,936 will have identity of inventorship and identity of ownership. Accordingly, the Examiner's rejection under 35 U.S.C. § 102(f) is no longer applicable.

Double Patenting Rejection

Claims 1-24 were provisionally rejected under 35 U.S.C. § 101 for alleging claiming the same invention as claims 1-24 of copending Application No. 10/690,947. Applicants respectfully traverse this rejection to the extent it applied to the claims as amended.

Claims 1-22 have been canceled. These claims are being pursued in copending Application No. 10/691,936.

Claims 23 and 24 of the co-pending application which correspond to the claims in this application have been cancelled.

AMENDMENT AND RESPONSE TO OFFICE ACTION

As noted above, Applicants are submitting a Petition to Correct Inventorship in copending application U.S.S.N. 10/691,936 in order to add Srinivas G. Rao as an inventor. Dr. Rao is assigning his interest in U.S.S.N. 10/691,936 to Cypress Bioscience, Inc. As a result, the present application and U.S.S.N. 10/691,936 will have identity of inventorship and identity of ownership. Accordingly, the Examiner's rejection under 35 U.S.C. § 101 is no longer applicable.

Allowance of claims 23-41, as amended, is respectfully solicited.

Respectfully submitted,

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